

May 20, 2024

Commissioner Melanie Loyzim
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

via electronic submission

Subject: HCPA Comments on Maine Packaging Material Exemption Request

The Household & Commercial Products Association (HCPA)¹ appreciates the opportunity to offer comments that can be used by the Maine Department of Environmental Protection (DEP) to evaluate products subject to federal laws and regulations that should be excluded from the “packaging material” definition under Maine’s Stewardship Program for Packaging.² We look forward to continued work with the Department on implementing rules and regulations to carry out the requirements of the Stewardship Program for Packaging.

Background

HCPA represents approximately 230 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily. We have many members who sell products into Maine or otherwise have a presence in the state and are committed to ensuring that all residents have access to high-quality products with reduced environmental impacts.

¹ The HCPA is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

² Public Law 2021, Chapter 455.

Among the various categories of household and commercial products that HCPA represents are disinfectants that kill germs in homes, hospitals, and restaurants and pest management products for pets, home, lawn, and garden. These products are broadly regulated as pesticides at the federal level by the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). There are several provisions under FIFRA that significantly diminish the ability of producers to increase the recyclability and reduce the volume of packaging material used for pesticides. Our comments below describe the complexities of FIFRA-regulated products and why they should be excluded from the “packaging material” definition under Maine’s Stewardship Program for Packaging.

Exemption Request Questions from the Department

1. *Which federal laws or regulations preclude or significantly diminish a producer’s ability to increase the recyclability or reduce the volume of packaging material? Please provide specific citations and language.*

FIFRA and related regulations and standards that apply to the pesticide products industry result in unique circumstances that significantly diminish the ability of producers to increase recyclability and reduce volume of packaging material. The primary objective of FIFRA is to ensure that, when applied as instructed, pesticides (including disinfectants and pest management products) will not generally cause unreasonable risk to human health or the environment. To reach this objective, FIFRA includes provisions that require EPA to establish several programs, including for packaging, labeling, storage, disposal, and transportation, as described in 40 CFR § 156 (labeling), 157 (child-resistant packaging), and 165 (nonrefillable containers, other packaging requirements).

For example, 40 CFR § 165 Subpart B requires pesticides that are intended to be distributed or sold and that meet certain criteria to be packaged in nonrefillable containers, limiting the ability of producers to reduce packaging volume by transitioning to reuse/refill systems. Producers that are able and choose to use refillable containers for pesticide products must meet strict construction requirements as detailed in 40 CFR § 165 Subpart C, which may not be technically feasible to achieve for all pesticide product formulas. As described in 40 CFR § 165 Subpart D, there are also standard procedures and recordkeeping requirements that must be followed for repackaging pesticides into refillable containers for distribution, which adds another layer of complexity for producers seeking to sell pesticides in refillable containers. While products intended to be refilled by a consumer (*i.e.*, refill-at-home or refill-on-the-go models, as opposed to return-and-reuse models) do not need to meet these requirements, they must use specific reuse language on the container label per 40 CFR § 156.140(a)(2)(iii) that may not be in line with the standards of Maine’s Stewardship Program for Packaging.

Additionally, 40 CFR § 157 requires certain pesticides to be packaged in child-resistant packaging, which inputs rigorous design and construction requirements on product packaging, including needing to pass specified test procedures for chemical compatibility and packaging durability as specified in 40 CFR § 157.32. This significantly limits the available material and structure choices a company can make, such as decreasing the thickness of the container or switching to a more recyclable type of plastic for the container material, to improve recyclability or decrease packaging.

More generally, 40 CFR § 156 sets out labeling requirements that all pesticide products must meet, including instructions for recycling or other disposal.³ Required disposal instructions range from simple to complex multi-step procedures. For example, a disinfectant surface cleaner could be recyclable when empty, but some concentrated disinfectants may need to have the container emptied and cleaned according to a specified rinse procedure before they are acceptable for the recycling stream.

As one example, companies are increasingly looking to use flexible packaging (*i.e.*, pouches) to store and distribute concentrated pest management products, without added water, that consumers can dilute and apply to their lawns and gardens. Since these products are packaged without added water, they are smaller and lighter and contribute to reduced packaging. At the same time, EPA has determined pesticides packaged in flexible packaging 20 fluid ounces or less in size and marketed for residential use are subject to child-resistant packaging requirements.⁴ While innately these products have many environmental benefits due to the removal of water and their use should be incentivized, the packaging for these products must also be designed and constructed to meet rigorous tests. Any changes to the shape, color, or composition of the packaging and labeling statements must be approved by EPA prior to selling the updated product. As such, companies may not be able to make changes that go beyond the notable efforts they have already put in to get pesticide concentrates packaged in flexible pouches on the market at all. HCPA is concerned that if an exemption is not given to FIFRA-regulated products with regulatory limitations such as these, the structure of Maine's Stewardship Program for Packaging will unintentionally penalize companies instead of encouraging the adoption of new, more sustainable innovations for pesticide product packaging.

³ See <https://www.epa.gov/sites/default/files/2017-10/documents/chap-13-jul-2013.pdf> for more information on labeling requirements.

⁴ <https://www.federalregister.gov/documents/2024/02/08/2024-02587/pesticides-flexible-packaging-child-resistant-packaging-requirements-notice-of-availability>

2. *If content or construction standards are not directly specified in the citations referenced in response to Question 1, please explain how the cited federal laws or regulations indirectly specify content or construction standards.*

In addition to the specific constraints described above, all product packaging and labeling for FIFRA-regulated products, including changes to existing product packages and labels, must undergo EPA review prior to being sold in order to ensure compliance with the above-described sections as well as other expansive FIFRA requirements. This review can take years and there is no guarantee that EPA will approve the proposed changes. Thus, even in those cases where producers are able to make packaging design changes to improve recyclability and reduce packaging material, the timeline for those changes to be approved and able to be implemented in practice can be far longer than the timelines established as part of Maine's Stewardship Program for Packaging. This places producers in a position of not being able to make packaging design changes in time to meet the requirements of Maine's law even if the change is theoretically possible to implement.

3. *To which product or group of products do the federal laws or regulations referenced in response to Question 1 and any circumstances specified in response to Question 2 apply?*

The federal laws, regulations, and circumstances described in response to questions 1 and 2 apply to pesticide products regulated under FIFRA.⁵

4. *Do the federal laws or regulations referenced in response to Question 1 and any circumstances specified in response to Question 2 apply to some or all packaging material associated with the product or group of products identified in response to Question 3? If some, identify the packaging material that is affected.*

FIFRA applies to all pesticide products other than those exempted as described in 40 CFR § 152.6-10 and 152.20-25. Some requirements under FIFRA apply to all pesticide products, such as label standards. Others only apply to those that meet certain criteria, such as nonrefillable container, refillable container, repackaging, and child-resistant packaging regulations. There is significant complexity in distinguishing which products meet which criteria, particularly at the level of the typical consumer trying to decide how to dispose of a container. HCPA encourages the Department to review the specific regulatory sections cited in the answer to question 1 for more information.

5. *Who should the Department contact with questions regarding this exemption request?*

Please contact Molly Blessing, Vice President, Sustainability & Product Stewardship, HCPA at mblessing@thehcpa.org with any questions regarding this exemption request.

⁵ 40 CFR § 152.15

Conclusion

HCPA appreciates the opportunity to submit information to be used in evaluation of a packaging material exemption request as part of implementation of Maine's Stewardship Program for Packaging and appreciates the care that the Department is taking to solicit and incorporate stakeholder input. HCPA looks forward to continuing to engage with the Department to support successful implementation of Maine's Stewardship Program for Packaging. We invite any questions about this submission and look forward to the Department's response.

Sincerely,

A handwritten signature in black ink, appearing to read "Molly R. Blessing". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Molly R. Blessing
Vice President, Sustainability & Product Stewardship